

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT M. RUTHERFORD,

Petitioner,

V.

ROBERT HERZOG,

## Respondent.

CASE NO. C14-5058 BHS

## ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 13), and

Petitioner Robert M. Rutherford's ("Rutherford") objections to the R&R (Dkt. 14).

On January 16, 2014, Rutherford signed his federal habeas petition seeking relief pursuant to 28 § U.S.C. 2254. Dkt. 4. On March 6, 2014, Respondent Robert Herzog responded. Dkt. 10.

On May 23, 2014, Judge Creatura issued an R&R recommending that Rutherford's petition be dismissed as time-barred by over 10 years. Dkt. 13 at 4-7. Judge Creatura also recommended denying Rutherford a certificate of appealability, as

1 Rutherford did not make “a substantial showing of the denial of a constitutional right.”  
2 Dkt. 13 at 7 (*citing* 28 § U.S.C. 2253(c)(2)).

3 The district judge must determine de novo any part of the magistrate judge's  
4 disposition that has been properly objected to. The district judge may accept, reject, or  
5 modify the recommended disposition; receive further evidence; or return the matter to the  
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

7 Rutherford's objections contain no legal authority or argument demonstrating that  
8 Judge Creatura's thorough and well-reasoned analysis of the procedural history of  
9 Rutherford's personal restraint petitions to the state courts of appeal and the applicable  
10 law regarding the statute of limitations for federal habeas petitions was in error. The  
11 Court concurs with Judge Creatura's R&R in its entirety.

12 The Court having considered the R&R, Plaintiff's objections, and the remaining  
13 record, does hereby find and order as follows:

14 (1) The R&R is **ADOPTED**;  
15 (2) This action is **DISMISSED**; and  
16 (3) A certificate of appealability is **DENIED**.

17 Dated this 7th day of July, 2014.

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BENJAMIN H. SETTLE  
United States District Judge